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Mr. Anthony S. Evers
Deputy State Superintendent
Department of Public Instruction
125 South Webster
Madison, WI 53707

Dear Mr. Evers:

On behalf of the Department of Public Instruction, you have asked for my opinion about the effect of the United States Supreme Court's decision in *Parents Involved in Community Schools, et al. v. Seattle School Dist. No. 1, et al.*, ___ U.S. ___, 127 S. Ct. 2738 (June 28, 2007), on section 118.51(7) of the Wisconsin Statutes. Based on subsequent conversation with your staff, I understand that your concern is specifically related to subsection (a) of that statute. For the reasons that follow, it is my opinion that section 118.51(7)(a) cannot be applied in a manner that is consistent with the equal protection guarantee of the United States Constitution.

Section 118.51(7)(a) provides:

> The school board of a school district that is eligible for aid under subch. VI of ch. 121 shall reject any application for transfer into or out of the school district made under this section if the transfer would increase racial imbalance in the school district. A pupil who transfers out of a school district under subch. VI of ch. 121 shall not be counted in that school district's membership, as defined in s. 121.004(5), for the purpose of determining the school district's racial balance under this paragraph.

In effect, it requires each Wisconsin school district that is eligible for special transfer aid under subchapter VI of chapter 121 of the Wisconsin Statutes to reject a student's request to transfer into or out of that district under the full-time open enrollment program if the requested transfer would increase the district's racial imbalance. The effect of subsection (7)(a) is that a student's race becomes a mandatory, threshold requirement when determining whether a student will be allowed to transfer into an available space in a school district that is eligible for special transfer aid, or out of such a district into another school district that has space for the student.

In order to comprehensively respond to your question, it is necessary to explain the basic operation of the special transfer aid program, the basic operation of the open enrollment program, and the U.S. Supreme Court's decision in *Seattle School Dist. No. 1*.

Historical background: special transfer aid. The special transfer aid program contained in chapter 121, subchapter VI, was enacted by chapter 220, Laws of 1975, and first went into effect in the 1976-77 school year. The purpose of the program, sometimes referred to as the "school integration aid program" and sometimes as the "Chapter 220 aid program," is stated in section 1 of chapter 220, Laws of 1975:

> The state of Wisconsin hereby declares that it is the announced policy of the state to facilitate the transfer of students between schools and between school districts to promote cultural and racial integration in education where students and their parents desire such transfer and where schools and school districts determine that such transfers serve educational interests. The state further declares that it is a proper state expense to encourage such transfers through the provision of special aids.

The history of the Chapter 220 aid program is closely associated with two federal lawsuits involving Milwaukee Public Schools ("MPS"). In 1976, the Federal District Court for the Eastern District of Wisconsin determined that MPS created and maintained a system of racial segregation in its schools. *Amos v. Board of Directors of City of Milwaukee*, 408 F. Supp. 765 (E.D. Wis. 1976). Although that determination was reversed by the United States Supreme Court and remanded to the district court for reconsideration in light of the Court's more recent precedent, *Brennan v. Armstrong*, 433 U.S. 672 (1977), the district court on remand reaffirmed its essential finding that MPS violated the equal protection rights of the plaintiff class by acting with segregative intent against them. *Armstrong v. O'Connell*, 451 F. Supp. 817 (E.D. Wis. 1978). In 1979, the district court approved an agreed-upon desegregation plan to ensure that at least 75% of MPS students would be enrolled in racially balanced schools. *Armstrong v. Board of Sch. Directors, etc.*, 471 F. Supp. 800 (E.D. Wis. 1979). The approved settlement plan defined the parameters of the range of allowable black enrollment at elementary, middle, and high schools, and remained in effect until July 1, 1984. *See* Wisconsin Legislative Fiscal Bureau, *School Integration (Chapter 220) Aid*, (Informational Paper 28, January 2007) ("LFB Informational Paper 28") at 1.[1]

In 1984, MPS filed a lawsuit against 24 suburban school districts and the State of Wisconsin, alleging the defendants unlawfully cooperated to isolate and confine Milwaukee area black students within the City of Milwaukee in order to foster and maintain segregated schools in the metropolitan area. *Board of School Directors v. State of Wis.*, 649 F. Supp. 82 (E.D. Wis. 1985). The district court approved a settlement agreement in October 1987, which

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[1]This Informational Paper is available on the Legislative Fiscal Bureau's website, *http://www.legis.state.wi.us/lfb/Informationalpapers/28.pdf* (last accessed, December 20, 2007).

was dependent on the Chapter 220 program to facilitate and finance increases in the number of voluntary pupil transfers between MPS and suburban Milwaukee school districts. LFB Informational Paper 28 at 1. Until an extension of the settlement agreement that expired in 1995, the participating suburban school districts agreed to make a good faith effort to fill a certain number or percentage of their seats or enrollments with Chapter 220 minority student transfers. LFB Informational Paper 28 at 9-10. MPS agreed to make a percentage of its seats available for transfer by students from the participating suburban districts. LFB Informational Paper 28 at 10. Since the expiration of the settlement agreement, MPS has entered into individual interdistrict transfer agreements with participating suburban school districts. LFB Informational Paper 28 at 12.

Special transfer aid: basic program features. Chapter 220 aid is available for certain interdistrict pupil transfers between districts with relatively high and relatively low minority enrollments. Chapter 220 aid is also available for certain intradistrict pupil transfers in school districts where some attendance areas have relatively high minority populations, and some have relatively low minority populations. *See generally* sec. 121.85(2), (3), and (6), Wis. Stats. The Chapter 220 aid received by a district is distributed through the equalization aid formula. Aid distributed through that formula reduces the amount that the aided school district can raise the property tax levy in the district, and is included when calculating an aided district's revenue limit. LFB Informational Paper 28 at 2.

Section 121.845(2) defines "minority group pupil" for both interdistrict and intradistrict transfers to mean "a pupil who is Black or African American, Hispanic, American Indian, an Alaskan native, or a person of Asian or Pacific Island origin, and who has reached the age of 4 on or before September 1 of the year he or she enters school." State aid under both the interdistrict and intradistrict aspects of the program is provided for each minority group pupil who transfers from an attendance area where minority group pupils comprise 30% or more of the enrollment of the school that serves the attendance area to a school which has less than a 30% minority enrollment. Sec. 121.85(2)(a)1. and (b)1., Wis. Stats. Aid is also provided for each nonminority group pupil who transfers from an attendance area where nonminority group pupils comprise less than 30% of the school's enrollment to a school which has a minority enrollment of 30% or more. Sec. 121.85(2)(a)2. and (b)2., Wis. Stats. Information from the Department of Public Instruction's website indicates that, as of the third Friday in September 2007, MPS's minority group enrollment, using the racial classifications identified in section 121.485(2), was 84%, and its nonminority enrollment was 16%.[2]

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[2]District ethnicity data is from DPI's website, *http://dpi.wi.gov/lbstat/pubdata2.html*, and in the Microsoft Excel spreadsheet for Public Enrollment by District by Ethnicity, *http://dpi.wi.gov.lbstat.xls/pede07.xls* (last accessed, December 20, 2007). As of the third Friday in September 2007, the date on which enrollments must be reported to DPI, 4.5% of MPS students were of Asian or Pacific Island origin, 57.5% were non-Hispanic black, 21% were Hispanic, 0.8% were Native American or Alaskan Native, and 16% were white. *Id.*, row 225 (MPS).

School districts receive aid under the Chapter 220 program for a particular year based on the number of pupils transferred in the prior school year. Under the intradistrict transfer aspect of the program, the participating district currently receives an additional 25% of its state equalization aid for each eligible intradistrict transfer. LFB Informational Paper 28 at 3. Under the interdistrict transfer aspect of the program, the receiving district is paid an amount equal to its average net cost per pupil multiplied by the number of transfer pupils accepted by the district. Under the interdistrict transfer aspect of the program, the sending district also financially benefits, because it is permitted to count each student transferred out of the district as three-quarters of a pupil for membership purposes. LFB Informational Paper 28 at 4. A district's membership is one of the principal factors on which the district's state equalization aid is based. Sec. 121.07(1)(a), Wis. Stats.

In 2006-07, 3,075 MPS students attended schools in suburban districts and 382 students from suburban schools attended in MPS under the interdistrict pupil transfer program. LFB Informational Paper 28 at 6; *id.* at 7, Table 2. Chapter 220 interdistrict aid payments to suburban school districts in 2006-07 totaled $31,229,441; MPS received $2,995,890 in Chapter 220 interdistrict aid payments. Pursuant to section 121.85(8), students who transfer schools under the special transfer aid program have the right to complete their education at the elementary, middle, or high school to which the student transferred, so long as full funding under the program remains available. MPS makes information available to parents about the application process and available seats in suburban school districts under the Chapter 220 interdistrict transfer program. The program guide for the 2007-08 school year, *Suburban School Opportunities*, reflects MPS's agreement with 23 suburban districts.[3] Transfer opportunities in those districts range from a low of zero available seats in one district to 39 available seats in the district with the greatest number of available seats. Most districts participating during the 2007-08 school year limit the grades for which transfers are available. Many more seats are available for elementary students than for middle or high school students. *Suburban School Opportunities* at 7. MPS's agreement with the suburban districts requires the suburban districts to use a random selection method to pick transfer students where there are more applicants for transfer to a suburban district than there are available seats. *Id.* at 5.

Full-time open enrollment: basic program features. The full-time open enrollment program was created by 1997 Wisconsin Act 27, sec. 2843g. Since the 1998-99 school year, a pupil has been able to attend any public school located outside the pupil's school district or residence if the pupil's parent or guardian complies with certain application dates and procedures. Sec. 118.51, Wis. Stats. In general, a nonresident district may reject a pupil's application to transfer into the district only on the basis of a limited number of criteria, relating primarily to school, space, or program availability, a student's disciplinary history, and the availability of special education programs for the child. Sec. 118.51(5), Wis. Stats. In general,

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[3]MPS's *Suburban School Opportunities* for the 2007-08 school year is available on the MPS website, *http://www2.milwaukee.k12.wi.us/supt/portal/220-07.pdf* (last accessed, December 20, 2007).

a resident district may reject a pupil's application to transfer out of the district if the pupil is a child with disabilities and the costs of the special education program in the nonresident district would impose an undue financial burden on the resident school district. Sec. 118.51(12)(b), Wis. Stats. In addition, school districts that are eligible for Chapter 220 aid are required by statute to reject any application for transfer into or out of the district if the transfer would increase racial imbalance in the district. Sec. 118.51(7)(a), Wis. Stats.

Under the full-time open enrollment program, the Department of Public Instruction is required to determine a per-pupil transfer amount, based on the statewide average of selected costs categories. The 2006-07 per-pupil amount was approximately $5,900. Legislative Fiscal Bureau, *Interdistrict Public School Open Enrollment* (Informational Paper 30, January 2007) ("LFB Informational Paper 30") at 5. Basically, a school district's equalization aid is increased or decreased by an amount equal to the per-pupil transfer amount multiplied by the school district's net gain or loss of pupils under the open enrollment program. LFB Informational Paper 30 at 5-6. The state aid adjustments resulting from the open enrollment program are not considered in determining a school district's revenue limits. Thus, if a district has a net gain of students, the aid payment is not included in the district's revenue limit; *i.e.*, the payment represents an amount that the district can spend over and above its revenue limit. However, if a district has a net loss of students, it may not increase the tax levy to compensate for the loss of state aid. LFB Informational Paper 30 at 6.

***Seattle School Dist. No. 1* case: facts and legal principles.** On June 28, 2007, the Supreme Court decided *Seattle School Dist. No. 1*, 127 S. Ct. 2738. The Court reviewed school assignment plans in the public school districts that serve Seattle, Washington and Louisville, Kentucky. Specifically, a group of parents alleged that the Seattle district's use of race as a factor to determine the assignment of ninth graders to the district's ten high schools violated equal protection. *Id.* at 2747-48. In the second case, the parent of a Louisville student challenged on equal protection grounds the Louisville district's use of race to assign elementary school students to schools in the district, and the Louisville district's policy that disallowed requests to transfer from an assigned school to a different school where the transfer would have an adverse effect on the racial balance of either school. *Id.* at 2749-50.

In the Louisville case, the school district was operating under a student assignment plan it adopted in 2001, which required all non-magnet schools to maintain a minimum black enrollment of 15% and a maximum black enrollment of 50%. The district as a whole is approximately 34% black, and 66% white. *Id.* at 2749. Louisville's plan was adopted after a federal district court in 2000 dissolved a desegregation decree that had been in effect since 1975, after concluding that the district had eliminated the vestiges of its prior segregation policy to the greatest extent practicable. *Id.* In August 2002, Meredith Crystal moved into the school district and sought to enroll her son Joshua in kindergarten at Breckenridge-Franklin, the school that Joshua would normally attend because of the location of his new residence. Breckenridge-Franklin was only a mile from his new home, but had no space available for Joshua. The Louisville district assigned Joshua to another school in the cluster of schools to

which Breckenridge-Franklin belonged, Young Elementary. Young Elementary was ten miles away from Joshua's new home. Joshua's mother applied to transfer Joshua to a school in a different cluster, Bloom Elementary—which, like Breckenridge-Franklin, was only a mile from his home. Transfers between schools in different clusters was permitted under Louisville's policy, and space was available at Bloom Elementary, but Joshua's transfer request was denied because the transfer would have an adverse effect on desegregation compliance. *Id.* at 2750.

The Court began its discussion of the Seattle and Louisville school assignment plans by observing that "when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny," *id.* at 2751, because "racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification." *Id.* at 2752 (internal quotations omitted). To satisfy the "strict scrutiny" standard, each school district had the burden to demonstrate that its use of individual racial classifications in its school assignment plan was "narrowly tailored" to achieve a "compelling" government interest. *Id.*

The Court first considered the policy justifications offered by the school districts for their plans, in light of the two interests that the Court had previously qualified as "compelling." The Court acknowledged that remedying the effects of past intentional discrimination was a compelling governmental interest, but concluded that neither school district could rely on that justification for its school assignment program. Seattle had never segregated its schools by law, and the district was never subject to a court-ordered desegregation decree. And although Louisville had operated segregated schools and was subject to a desegregation decree for many years, that decree was dissolved in 2000 because the district court found that the district had eliminated the effects of its past discrimination. *Id.* at 2752.

The Court acknowledged that it had also held that the interest in diversity in higher education was a compelling governmental interest, but noted that the diversity interest there was not focused on race alone, but encompassed all factors that contributed to student body diversity. *Id.* at 2753. In the higher education cases, the elements of the desired diversity were so broad that the educational institution conducted an individualized review of each application. *Id.* Without addressing whether that same kind of interest in diversity was compelling in the context of public elementary and secondary education, the Court determined that in both the Seattle and Louisville plans,

> [R]ace is not considered as part of a broader effort to achieve "exposure to widely diverse people, cultures, ideas, and viewpoints"; . . . race, for some students, is determinative standing alone. . . . [U]nder each plan when race comes into play, it

> is decisive by itself. It is not simply one factor weighed with others in reaching a decision, as in *Grutter* [*v. Bollinger*, 539 U.S. 306 (2003)]; it is *the* factor.

Id. (internal citation omitted, emphasis in original). In addition, the Court was critical of the "limited notion of [racial] diversity" in the Seattle and Louisville policies. *Id.* at 2754. The Seattle plan viewed the racial categories of its students exclusively in terms of "white/nonwhite," and Louisville categorized its students simply as "black/other." *Id.* The Court observed that "[w]e are a Nation not of black and white alone, but one teeming with divergent communities knitted together with various traditions and carried forth, above all, by individuals." *Id.*, quoting *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 610 (1990) (O'Connor, J., dissenting). As an example of the limited concept of racial diversity reflected in the districts' plans, the Court observed that "under the Seattle plan, a school with 50 percent Asian-American students and 50 percent white students but no African-American, Native-American, or Latino students would qualify as balanced, while a school with 30 percent Asian-American, 25 percent African-American, 25 percent Latino, and 20 percent white students would not." *Id.*

The Court rejected the districts' arguments that the "diversity" interest they sought to achieve by their school assignment plans justified the means they chose to achieve that end; *i.e.*, assigning a racial classification to each student and making school assignments on the basis of each student's race. *Id.* at 2751-55, 2759-61. The four-Justice plurality and Justice Kennedy reached that conclusion for different reasons, however. The plurality rejected the proposition that a school assignment plan designed to approximate in each school the racial demographics of the community could ever state a compelling government interest. *Id.* at 2755-59. The plurality found authority for that view in the Court's earlier cases, *e.g.*, *Freeman v. Pitts*, 503 U.S. 467, 494 (1992) ("[r]acial balance is not to be achieved for its own sake"); *Regents of University of California v. Bakke*, 438 U.S. 265, 307 (1978) (opinion of Powell, J.) ("If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected . . . as facially invalid"); *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) ("outright racial balancing" is "patently unconstitutional"). *Seattle School Dist. No. 1*, 127 S. Ct. at 2757 (plurality opinion). Justice Kennedy agreed with the general conclusion that the two school districts before the Court had not demonstrated that the racial classifications they used were narrowly-tailored to achieve the districts' governmental interest in diversity, and focused on the districts' failure to "establish, in detail, how decisions based on an individual student's race are made in a challenged governmental program." *Id.* at 2789 (Kennedy, J., concurring). However, Justice Kennedy rejected the plurality's position that diversity could never be a compelling educational goal, *id.* at 2790-91, and left open the possibility that, upon "a showing of necessity not made here, [the government might be permitted] . . . to classify every student on the basis of race and to assign each of them to schools based on that classification." *Id.* at 2797 (Kennedy, J., concurring).

A majority of the members of the Court agree that public school districts have a compelling interest in achieving a racially diverse student population. *Seattle School Dist. No. 1*,

127 S. Ct. at 2796-97 (Kennedy, J., concurring); *Id.* at 2820-23 (Breyer, J., dissenting, joined by Justices Stevens, Souter, and Ginsburg). A different majority of the members of the Court conclude that binary racial classifications of the sort employed by Seattle and Louisville are not narrowly tailored to achieve that interest, because the districts' definitions of diversity are too narrowly drawn, *id.* at 2753-54 (plurality), 2790-91 (Kennedy, J., concurring), and because the use of race as a factor in the districts' decisionmaking, when race comes into play, is the sole determinant of the decision. *Id.* at 2273-54 (plurality), 2797 (Kennedy, J., concurring).

Application of *Seattle School Dist. No. 1* decision to section 118.51(7)(a). Section 118.51(7)(a) limits the ability of some students to participate in the open enrollment program if the school district into which or out of which they want to transfer is a district that is eligible to participate in the Chapter 220 integration aid program. The statute directs the school board of the Chapter 220-eligible district to "reject any application for transfer into or out of the school district . . . if the transfer would increase racial imbalance in the school district." Sec. 118.51(7)(a), Wis. Stats.

"Racial imbalance in the school district" is not defined in subchapter VI of chapter 121. Since the purpose of Chapter 220 aid is to encourage transfers between school districts to "promote cultural and racial integration in education," chapter 220, section 1, Laws of 1975, and since Chapter 220 aid is available only for interdistrict transfers of minority group and nonminority group students that satisfy the conditions set by the Legislature, it is reasonable to infer that the Legislature intended that "racial imbalance" would be defined by reference to the circumstances under which state aid is available. Chapter 220 aid is paid for an interdistrict transfer, and "racial imbalance" exists, where a minority group pupil transfers from an attendance area in the student's district of residence where minority group pupils comprise 30% or more of the enrollment of the school that serves the attendance area to a school in an attendance area in another district which has less than a 30% minority enrollment. Sec. 121.85(2)(a)1., Wis. Stats. Similarly, Chapter 220 aid is paid for an interdistrict transfer, and "racial imbalance" exists, where a nonminority group pupil transfers from an attendance area in the student's district of residence where nonminority group pupils comprise less than 30% of the school's enrollment to a school in an attendance area in another district which has a minority enrollment of 30% or more. Sec. 121.85(2)(a)2., Wis. Stats.

Although the focus of "racial imbalance" in subchapter VI of chapter 121 is on the minority and nonminority group enrollment at the school that serves an attendance area in the affected sending or receiving school district, the focus of the "racial imbalance" addressed by section 118.51(7)(a) is on the school district as a whole. Thus, an open enrollment request to attend a particular school in a district eligible for Chapter 220 aid might decrease the racial imbalance of that school's enrollment because the racial composition of the student body is substantially different than the racial composition of the student body of the entire district, but increase the overall racial imbalance of the district as a whole. In such a case, section 118.51(7)(a) would require the school board to deny the open enrollment application.

Racial imbalance in a school district eligible for Chapter 220 aid that already had a district-wide minority group enrollment of 30% or more would increase if the school board were to allow a minority group student to transfer into that district through open enrollment. If a nonminority group member sought to transfer into that district through open enrollment, however, section 118.51(7)(a) would not prohibit the transfer.

Similarly, racial imbalance in a school district eligible for Chapter 220 aid that already had a district-wide minority group enrollment of less than 30% would increase if the school board were to allow a nonminority group student to transfer into that district through open enrollment. If a minority group member sought to transfer into that district through open enrollment, however, section 118.51(7)(a) would not prohibit the transfer.

In addition, racial imbalance in a school district eligible for Chapter 220 aid that already had a district-wide nonminority group enrollment of less than 30% would increase if the school board were to allow a minority group student to transfer out of that district through open enrollment. If a nonminority group member sought to transfer out of that district through open enrollment, however, section 118.51(7)(a) would not prohibit the transfer.

Moreover, racial imbalance in a school district eligible for Chapter 220 aid that already had a district-wide minority group enrollment of 30% or more would increase if the school board were to allow a nonminority group student to transfer out of that district through open enrollment. If a minority group member sought to transfer out of the district through open enrollment, however, section 118.51(7)(a) would not prohibit the transfer.

As illustrated above, the effect of section 118.51(7)(a) upon an otherwise eligible open enrollment applicant who resides in or applies to a school district eligible for Chapter 220 aid is to make the applicant's racial classification the only factor in determining whether the applicant will be permitted to transfer to fill an available space in the receiving district.

The transfer limitation in section 118.51(7)(a) has all of the essential features of the Louisville school assignment policy invalidated in the *Seattle School Dist. No. 1* case. First, in Louisville, after a student was assigned to a school based on the location of the student's residence, school district policy allowed the student to request a transfer to a school in a different location, which request could be denied because of a lack of available space or because the transfer would adversely affect the district's racial balance policy, which required a 15% minimum and 50% maximum black enrollment at the district's non-magnet schools. 127 S. Ct. at 2749-50. Under Wisconsin's open enrollment program, a student may request an open enrollment transfer to a different school district, and such requests may be denied because of a lack of space in the receiving district, or for school districts eligible for Chapter 220 aid, because the transfer would increase the racial imbalance of the Chapter 220 district.

Second, the Louisville school district defined racial diversity in a binary way; as "black" and "other"—a category that included primarily white students, but also included a small

percentage of Asian and non-black Hispanic students. *Id.* at 2754. Section 121.845(2) similarly employs a binary racial classification system; *i.e.*, nonminority and "minority"—a category that includes black, African American, Hispanic, American Indian, Alaskan native, and persons of Asian or Pacific Island origin.

Third, under the Louisville school assignment plan, the race of a student seeking a transfer to another school was not a factor unless the school reached "the extremes of the racial guidelines," *id.* at 2749-50; *i.e.*, reached either the 15% minimum or 50% maximum enrollment thresholds. For most of the state's 425 school districts, race is not a factor in making decisions about open enrollment transfer applications. For residents of the 28 school districts eligible for Chapter 220 interdistrict or intradistrict transfer aid, however, the racial classification (*i.e.*, minority or nonminority) of an otherwise-qualified resident determines whether the school board may approve the application for open enrollment transfer out of the district. In addition, otherwise-qualified residents of school districts not eligible for Chapter 220 aid who apply for open enrollment transfer into one of the 28 Chapter 220-eligible districts can be approved or denied exclusively because of the effect the applicant's minority or nonminority racial classification would have on the receiving district's racial imbalance.

It is my opinion that the portion of section 118.51(7)(a) that requires a school district eligible for Chapter 220 aid to reject an open enrollment application if the requested transfer into or out of the district would increase the district's racial imbalance is inconsistent with the equal protection guarantee of the United States Constitution, as those guarantees were applied in the *Seattle School Dist. No. 1* case. The binary racial classification system of section 121.845(2) and the provision of section 118.51(7)(a) that conditions the approval of an open enrollment application for transfer into or out of a school district eligible for Chapter 220 aid on the individual applicant's race are not narrowly tailored to achieve a compelling government interest, under the Court's holding in the *Seattle School Dist. No. 1* case. 127 S. Ct. 2751-54, 2759-61.

I note that legislation was recently introduced in the Wisconsin Legislature that would repeal section 118.51(7)(a). 2007 Assembly Bill 517 (introduced October 2, 2007). The history and text of the bill can be located on the Legislature's website, *http://www.legis.state.wi.us/2007/data/AB517hst.html* (last accessed December 20, 2007).

Because this opinion may have a bearing on legislative action on AB 517, I am sharing it with the bill's authors and Assembly leadership for their information.

Sincerely,

J.B. Van Hollen

J.B. Van Hollen
Attorney General

JBVH:BAO:ajw

c: The Honorable Stephen Nass
The Honorable Scott Suder
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The Honorable John Nygren
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